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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

NO. 71-89

EVANS THEATRE CORPORATION, d/b/a LOEW'S GRAND THEATRE; JOHN MARVIN SMITH; AND JOHN HERBERT,

Petitioners,

vs.

LEWIS R. SLATON, DISTRICT ATTORNEY, ATLANTA JUDICIAL CIRCUIT; AND HINSON McAULIFFE, SOLICITOR GENERAL, CRIMINAL COURT OF FULTON COUNTY, GEORGIA,

Respondents.

BRIEF OF RESPONDENTS IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

EVANS THEATRE CORPORATION, d/b/a LOEW'S GRAND THEATRE; JOHN MARVIN SMITH; AND JOHN HERBERT,
Petitioners,
vs.
LEWIS R. SLATON, DISTRICT ATTORNEY, ATLANTA JUDICIAL CIRCUIT; AND HINSON McAULIFFE, SOLICITOR GENERAL, CRIMINAL COURT OF FULTON COUNTY, GEORGIA,
Respondents.

NO. 71-89

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

PART ONE

Come now LEWIS R SLATON, District Attorney, Atlanta Judicial Circuit, and HINSON McAULIFFE, Solicitor General, Criminal Court of Fulton County, Georgia, Respondents named herein, and pray that the Application for Writ of Certiorari to the Supreme Court of Georgia be denied, because the decision of the Court below is not reviewable at the present time, and because said decision involves no substantial federal question.

OPINION BELOW

The decision sought to be reviewed by this Court is reported at 227 Ga. 377 (1971) and 180 S.E. 2d 712. It is also set out as "Appendix A" of the Petitioner's Brief.

JURISDICTION

While Petitioners aver that jurisdiction to consider the decision is found in 28 U.S.C. Section 1257(3), Respondents deny that the issue is subject to review by this Court since the decision sought to be reviewed is not yet final, as will be hereinafter shown.

QUESTIONS PRESENTED

I. Is the Georgia Supreme Court's decision "final" within the meaning of 28 U.S.C. Sec. 1257, when said decision relates only to a temporary injunction, and contemplates a jury trial on the merits?

II. May the commercial exhibition of an obscene film be enjoined as a public nuisance?

III. If the commercial exhibition of an obscene movie may be enjoined as a public nuisance, do the Georgia Statutes relating thereto conform to due process when utilized for such purpose?

IV. Is the motion picture film "I Am Curious (Yellow)" obscene?

STATUTES INVOLVED

Although Petitioners have set out as the Georgia Statutes involved Georgia Code Title 72, Nuisances, additional statutes, state and federal are involved in the consideration of the application. They are as follows:

1) 28 U.S.C. Section 1257(3);

2) Georgia Code Chapter 26-21, as amended by Ga. Laws 1971, p. 344;

3) Georgia Code Section 26-2011, Public indecency;

4) Georgia Appellate Practice Act, Section 1(a)(3), Ga. Laws 1965, p. 18, as amended, particularly by Ga. Laws 1968, p. 1072 at 1073.

STATEMENT OF THE CASE

After Petitioners advertised that they would exhibit in Atlanta, Fulton County, Georgia, for an admission fee, the film "I am Curious (Yellow)" Respondents filed a compiaint against them. The complaint was entitled "Complaint to Declare Motion Picture Obscene and Subject to Seizure". Among other things the prayers requested that a Rule Nisi issue requiring Petitioners to show cause on a date certain why said film should not be declared obscene and subject to be seized by Respondents; that Petitioners have and produce at said hearing a copy of said film, that said film be declared obscene and subject to seizure; and that Respondents be temporarily and permanently enjoined from exhibiting said film in Fulton County, Georgia.

Said Petition was filed on September 30, 1970, and a hearing thereon was scheduled for the next day, October 1, 1970. Said hearing was subsequently rescheduled after Petitioners filed a removal petition with the United States District Court on October 1, 1970. The movie began its run in Atlanta on October 1, 1970; and, on October 2, 1970 the above hearing was held, after Petitioner's Motion for Continuance had been denied.

The trial court held the film obscene, subject to seizure, and granted the relief prayed for and ordered "that all

copies in the possession of defendants be seized, and that defendants, their associates, agents, and employees, be restrained and enjoined from distributing, exhibiting, or otherwise showing the film in any theater or other place where the public is permitted within the jurisdiction of the Court." 227 Ga. at 378.

Petitioners appealed said judgment to the Georgia Supreme Court, citing seven enumerations of error: (1) That the trial court erred in determining the film to be obscene; (2) in enjoining Petitioner's from showing or exhibiting the film; (3) in ordering the film seized as contraband; (4) in utilizing the procedure involved in the absence of statutory standards, provisions for jury trial, and other constitutional safeguards; (5) in refusing the requested continuance; (6) in not holding that the State was precluded from litigating the film's obscenity by virtue of the 2nd circuit's decision thereon in 404 F.2d 196; and (7) in determining that the Georgia obscenity law extends to the exhibition of obscenity to consenting adults. 227 Ga. at 378.

In its decision the Georgia Supreme Court determined that: (1) the trial court did not err in declaring the film obscene; (2) that the trial court did not err in determining that it was not bound by the decision rendered by the United States Second Circuit Court of Appeals in *United States v. A Motion Picture Film Entitled "I am Curious—Yellow,"* 404 F.2d 196; (3) that the trial court did not err in enjoining the public exhibition of an obscene film; (4) that the trial court did not err in denying Petitioners' Motion for Continuance; and that (5) the trial court did not err in determining that the Georgia obscenity laws extend to the exhibition of obscene films to consenting adults.

In addition to the above, the Georgia Supreme Court made two additional rulings which relate directly to the question of finality. In the fourth division of the opinion, the Court determined that the trial court erred in permanently restraining and enjoining the Petitioners from exhibiting the film in an interlocutory hearing without a jury. The Court then directed that the order be revised to show that it was interlocutory in nature, and would only continue in force until the final hearing of the case by a jury. Likewise in the fifth division of said opinion the Court directed the trial court to modify its order by providing that "no destruction of the film be made unless and until a final determination is made by the jury that it (i.e. the film) is obscene." 227 Ga. at 383.

PART TWO

REASONS FOR NOT GRANTING THE WRIT

I. THIS COURT HAS NO JURISDICTION TO REVIEW A DECISION OF THE GEORGIA SUPREME COURT WHICH IS NOT FINAL.

This Court's jurisdiction to review state court decisions by certiorari is set out in 28 U.S.C. Section 1257(3), which section provides that "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . . (3) By writ of certiorari . . . where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

It is apparent from a reading of the Georgia Supreme Court's decision that said decision is not "final", and contemplates that a jury trial is to be had on the material issues involved, including, but not limited to, the issue of the film's alleged obscene nature, whether it constitutes a public nuisance, caused and continued by Petitioners.

A State Court judgment to be within this Court's appellate jurisdiction must be final "in two senses: It must be subject to no further review or correction in any other state tribunal; it must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein. It must be the final word of a final court." *Market St. Ry. Co. v. Railroad Commission of the State of California,* 324 U.S. 548, 551, 65, S.Ct. 770, 89 L.Ed. 1171 (1945), rehearing denied 324 U.S. 890, 65 S.Ct. 1020, 89 L.Ed. 1438. That the judgment be final is not merely a technicality, to be easily scorned, but an important factor in the smooth working of our federal system. *Montgomery Bldg. & Const. Trades Council v. Ledbetter Erection Co.,* 344 U.S. 178, 180, 73 S.Ct. 196, 97 L.Ed. 204 (1952) citing *Radio Station WOW v. Johnson,* 326 U.S. 120, 124, a judgment of the highest state court reversing the decree of the trial court in an equity cause, and remanding the cause for further proceedings in harmony with its opinion is not final within the meaning of said statute. *Schlosser v. Hemphill,* 198 U.S. 173 at 175, 25 S.Ct. 654, 49 L.Ed. 1000 (1905). See also *Coe v. Armour Fertilizer Works,* 237 U.S. 413 at 418, 35 S.Ct. 625, 59 L.Ed. 1027 (1915); *Pepper v. Dunlap,* 46 U.S. 51, 5 How. 51, 12 L.Ed. 46 (1847), *Morgan v. Thompson,* 124 F. 203, 59 C.C.A. 672, (Ind. T., 1903).

Compare the order in the case *sub judice* with the orders in *Food Emp. Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308, 88 S.Ct. 1601, 20 L.Ed. 2d 603 (1968) and *Mills v. State of Alabama,* 384 U.S. 214, 86 S.Ct. 1434, 16 L.Ed. 2d 484 (1966). See also *Moses v. The Mayor,* 82 U.S. 387, 15 Wall 387, 21 L.Ed. 176 (1873); *Verden v. Coleman,* 59 U.S. 86, 18 How. 86, 15 L.Ed. 272 (1855); *Gibbons v. Ogden,* 19 U.S. 448, 6 Wheat 448, 5 L.Ed. 302 (1821).

Thus where a trial court issues a temporary injunction, and a Motion to Dissolve the same is denied by said Court, and its decision is affirmed on appeal by the State Supreme Court, the Supreme Court's judgment is not a "final" judgment within the meaning of 28 U.S.C. Section 1257, and therefore is not reviewable by this Court. *Montgomery Building and Construction Trades Council, et al. v. Ledbetter Erection Co., Inc.,* 344 U.S. 178, 73 S.Ct. 196, 97 L.Ed. 204 (1952); *Gibbons v. Ogden,* 6 Wheat. 448, 19 U.S. 448, 5 L.Ed. 302 (1821).

Likewise where the State Supreme Court affirms a lower Court ruling granting a temporary injunction and remands the case back for a jury trial on the merits, its decision on the temporary injunction cannot be considered as a final determination of the issues (assuming the trial court had jurisdiction to grant the temporary injunction).

II. THE COMMERCIAL EXHIBITION OF AN OBSCENE FILM MAY BE ENJOINED AS A PUBLIC NUISANCE, EVEN THOUGH ITS EXHIBITION ALSO CONSTITUTES A CRIME.

In order to properly consider this issue it is necessary

to review the legal history culminating with the petition filed by Respondents in the present case.

During the period of time involved there took place in Fulton County, Georgia several police raids, pursuant to search warrants, which resulted in the seizure of allegedly obscene materials. The cases ultimately were decided by three-judge United States District Courts, said decisions were to the effect that this Court in *Marcus v. Search Warrants*, 367 U.S. 717 (1961), and *A Quantity of Books v. Kansas*, 378 U.S. 205 (1964), (see also *Metzger v. Pearcy*, 393 F.2d 202 (7th Cir. (1968)), determined that no seizures of allegedly obscene materials could be had until after an adversary proceeding had determined that the material in question was obscene; and that since no adversary proceedings had been held prior to the seizures in said cases, the seizures were unlawful. See *Central Agency, Inc. v. Brown, et al.*, 308 F. Supp. 502 (N.D. Ga., 1969), *Gable v. Jenkins*, 309 F. Supp. 998 (N.D. Ga., 1969) aff'd per curiam 90 S.Ct. 1351 (1970), *Sherpix v. McAuliffe*, ... F. Supp. (unreported) (N.D. Ga., Sept. 2, 1969, C.A. No. 13024), see also *Carter et al. v. Gautier, et al.*, 305 F. Supp. 1098 (M.D. Ga. Sept. 15, 1969).

As a consequence of such decisions Respondents began instituting proceedings identical to the procedure in the case *sub judice*, the effect of which was to afford persons such as Petitioners the "required" adversary proceedings prior to seizure of allegedly obscene materials. See *Peachtree News Company, Inc., et al. v. Slaton, et al., Buckhead Books Mart et al. v. Slaton, et al.*, (two Cases), 226 Ga. 471 (1970), *Johnnie Reb's Book and Card Shop v. Slaton*, ... U.S. .....

(N.D. Ga., March 17, 1970, C.A. No. 13333). Indeed such procedures have inferentially been approved by this Court in its per curiam affirmance of *Gable v. Jenkins, supra,* see fn. 3 of argued opinion 309 F. Supp. at 1001. See also *Tyrone, Inc. v. Wilkinson,* 410 F.2d 639, 641 (4th Cir. 1969) cert. den. 396 U.S. 985 (1970).

The precise question of whether or not obscenity can be controlled by injunction is not new to this Court, and has been decided adversely to Petitioner's contentions. In *Kingsley Books, Inc. v. Brown,* 354 U.S. 436 (1956) this Court upheld the constitutionality of a New York statute authorizing the injunction of obscene prints and articles by the Supreme Court of New York, without a jury, upon the complaint of the chief executive or legal officer of any city, town or village. In said decision this Court stated:

> "It is not for this Court thus to limit the State in resorting to various weapons in the armory of the law. Whether proscribed conduct is to be visited by a criminal prosecution or by a *qui tam* action or by an injunction or by some or all of these remedies in combination, is a matter within the legislature's range of choice. See *Tigner v. Texas,* 310 U.S. 141, 148. If New York chooses to subject persons who disseminate obscene "literature" to criminal prosecution and also to deal with such books as deodands of old, or both, with due regard, of course, to appropriate opportunities for the trial of the underlying issue, it is not for us to gainsay its selection of remedies." *Id.* at 441.

Kingsley Books is still good law as shown in *Freedman v. Maryland,* 380 U.S. 51, 60 (1960), a case strongly relied upon by Petitioners, but easily distinguishable

from the case *sub judice,* as is *Teitel Film Corp. v. Cusack,* 390 U.S. 139, 141-142 (1969) also strongly relied upon by Petitioners. However, both of said cases dealt with the prior submission of films to censorship boards, and the evil condemned was not that such a procedure was not unconstitutional, but that in the instant case the statutes involved were unconstitutional because they did not provide for a prompt judicial determination of obscenity — a problem not involved here, since the order appealed was as a result of a judicial determination after the film was exhibited to the public.

Petitioners place their primary reliance on *Grove Press Inc. v. City of Philadelphia,* 418 F.2d 82 (1962). Their reliance is misplaced. The above case was decided in Grove Press's favor, not because the injunctive procedure is an impermissible method of dealing with obscenity, but because "there is no guarantee a final hearing will be seasonably scheduled after the issuance of a preliminary injunction and that a prompt decision will be forthcoming thereafter." *Id.* at 90. Such deficiencies, however, are not found in the Georgia procedure which is governed by statutory law, as set out as Petitioners' appendix "B", and by the Georgia Civil Practice Act (Ga. Laws 1966, p. 609, as amended, particularly by Ga. Laws 1969, p. 645, and Ga. Laws 1970, p. 170). Furthermore, this Court has tacitly approved the procedure utilized here in its affirmance of *Gable v. Jenkins, supra,* and the Georgia Supreme Court specifically found that the film was a public nuisance because it was found to be obscene.

A viewing of the film leads us to the conclusion that had the sexual scenes been performed live, they would have been in clear violation of Georgia Code Section

26-2011 (Ga. Laws 1968, p. 1249, 301). As such they constitute a prohibited lewd performance; and the premises where the performance takes place is a lewd house, and enjoinable as a public nuisance. Can the "heroine" be considered any less a prostitute merely because her services are performed in front of a camera, rather than behind closed doors and she is paid therefor by the movie producer rather than having payment made to her by her clients? We think not!

> "Such acts are prohibited, not because of the injury inflicted on other individuals, as in the case of murder or robbery, but because the acts are offensive to the majority of the people. If any semblance of civilization is retained in our country, the States must have standards of conduct permissible in public. There is little difference in the effect on the public between lewd conduct in public areas and lewd conduct explicitly performed on a motion picture screen for the viewing of the public." 227 Ga. at 381.

It is because such conduct is offensive to the majority of the general public, that the evil of a lewd house or an obscene movie is amenable to injunction as a public nuisance.

III. THE PROCEDURE USED IN THIS CASE TO ENJOIN THE FILM'S EXHIBITION DOES NOT OFFEND DUE PROCESS.

In the main, the issues raised by Petitioners as procedural defects in the Georgia procedure utilized, have been decided adversely to Petitioners in *Kingsley Books, Inc. v. Brown,* 354 U.S. 436, which statute allowed injunctions *pendente lite,* and contained no requirement for a jury trial on the issue of obscenity. Additionally,

a distinction should be made between what Petitioners claim might have happened on the face of the statute, and what actually transpired. For, it is not the face of a state statute that governs its constitutionality but how it is construed and applied. *Younger v. Harris, et al,* 401 U.S. 37, n.4 (1971); *Dombrowski v. Pfister,* 380 U.S. 479, n.7 (1965).

Thus the case involved no ex parte injunction, nor did it involve a delay between filing the complaint, and obtaining a judicial decision. Indeed, the Georgia Supreme Court's interpretation of the decision, which interpretation is binding on the trial court, is more restrictive than the New York statute held constitutional. The Georgia Supreme Court is requiring that the case be remanded for a jury trial in accordance with Georgia Code Section 72-201.

Thus this Court is not concerned with the face of the statutes, if any construction or application thereunder is constitutional; and particularly, what construction and application have actually been utilized. Here no ex parte injunction was issued; the hearing was timely; the court's decision after hearing was timely; the appeal and appellate decision was heard and decided within a reasonably short time; and no doubt a jury trial on the hearing for a permanent injunction will be accomplished within constitutional time limits.

Additionally, the burden of proving the film obscene was carried by Respondents, who will likely do so again in the subsequent jury hearing. (Note: Although Petitioners take the position that due process requires that the State actually prove contemporary community standards, social value, and purient appeal, Respondents stand on

the position that the film speaks for itself, and that the Court can take notice of its contents when introduced into evidence and determine, as a question of law, its obscenity. We do not intend, thereby, to get trapped into conducting a battle of expert witnesses, when this Court utilizes the same procedure in deciding obscenity. See *Redrup v. New York,* 386 U.S. 767 (1967). Accordingly, except for deviant material, either a Court or a jury is capable of deciding those issues without resorting to a sifting of conflicting testimony by "expert" witnesses and poll takers. Does a judge or juror really have to hear testimony from a third person to know whether or not a particular movie offends the standards of the community in which he lives, is intended to appeal to a purient interest, or is utterly without social value? These are matters within ordinary common sense and everyday living. Does the fact that an "expert" witness is willing to testify that the national community standards are reflected by the standards of San Francisco, California, which allows waitresses to go both topless and bottomless, and that another "expert" witness testifies to the contrary, alter what the juror knows of his own knowledge. Again we think not! While we concur with the statement in *Freedman v. Maryland, Id.* at 58, to the effect that the burden of proving obscenity rests upon those who seek to prohibit it, we believe that the highest and best evidence of such is the material itself.)

IV. THE FILM "I AM CURIOUS (YELLOW)" IS OBSCENE.

As Petitioners correctly observe there is a myriad of cases on the question of this film's obscenity. At least

one federal appellate circuit has determined that it is not. On the other side of the coin many jurisdictions have disagreed. Indeed, a number of such cases are presently pending before this Court on applications for certiorari. See *Grove Press, Inc. v. Flash,* docket number 70-1; *Faircloth v. M. & W. Theaters,* docket number 70-10; *Grove Press, Inc. v. Barley,* docket No. 70-24, are but three in addition to this case. However by an equally divided court, this Court affirmed *Grove Press, Inc. et al. v. Maryland State Board of Censors,* 401 U.S. 480, 91 S.Ct. 966, 28 L.Ed. 2d 205 (1971), which decision declared the film obscene.

CONCLUSION

For all the foregoing reasons, Respondent urges this Court to decline to issue the Writ of Certiorari in this case.

Respectfully submitted,
Original Pen Signed By.

LEWIS R. SLATON
District Attorney
Atlanta Judicial Circuit
Original Pen Signed By.

JOEL M. FELDMAN
Assistant District Attorney
Original Pen Signed By.

CARTER GOODE
Assistant District Attorney

Counsel for Respondent,
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CERTIFICATE OF SERVICE

I hereby certify that I am a member of the Bar of the Supreme Court of the United States in good standing, and that I have this day deposited in the United States Post Office, Atlanta, Georgia, three copies of the foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari with first class postage prepaid addressed to Mr. Glenn Zell, Esquire, 725 Candler Building, Atlanta, Georgia 30303, counsel of record for Appellant.

This 8th day of ~~September~~ October, 1971.

Original Pen Signed By

JOEL M. FELDMAN
Assistant District Attorney
Atlanta Judicial Circuit

APPENDIX A

Georgia Criminal Code Chapter 26-21, Distributing Obscene Materials (Ga. Laws 1968, p. 1249, as amended by Ga. Laws 1970, p. 173 and Ga. Laws 1971, p. 344).

"26-2601. (sic) (i.e. mistake in amended law, should actually be 26-2101) DISTRIBUTING OBSCENE MATERIALS.—(a) A person commits the offense of distributing obscene materials when he sells, lends, rents, leases, gives, advertises, publishes, exhibits or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof, or who offers to do so, or who possesses such material with the intent so to do. Provided, that the word 'knowing' as used herein shall be deemed to be either actual or constructive knowledge of the obscene contents of the subject matter; and a person has constructive knowledge of the obscene contents if he has knowledge of facts which would put a reasonable and prudent man on notice as to the suspect nature of the material." (1971 amendment).

(b) Material is obscene if considered as a whole, applying community standards, its predominant appeal is to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and utterly without redeeming social value and if, in addition, it goes substantially beyond customary limits of candor in describing or representing such matters. Undeveloped photographs, molds, printing plates and the like shall be deemed obscene notwithstanding that processing or other acts may be required to make the obscenity patent or to disseminate it.

(c) Material, not otherwise obscene, may be deemed obscene under this section if the distribution thereof, or the offer to do so, or the possession with the intent to do so is a commercial exploitation of erotica solely for the sake of their prurient appeal.

(d) A person convicted of distributing obscene material shall for the first offense be punished as for a misdemeanor, and for any subsequent offense shall be punished by imprisonment for not less than one nor more than five years, or by a fine not to exceed $5,000, or both.

26-2102. DISTRIBUTING MATERIAL DEPICTING NUDITY OR SEXUAL CONDUCT.—(a) A person commits the offense of distributing material depicting nudity or sexual conduct when he sends unsolicited through the mail, or otherwise unsolicited causes to be delivered, material depicting nudity or sexual conduct to any person or residence or office unless there is imprinted upon the envelope or container of such material, in not less than eight point boldface type, the following notice:

"Notice—The material contained herein depicts nudity or sexual conduct. If the viewing of such material could be offensive to the addressee, this container should not be opened but returned to the sender."

(b) As used within this section "nudity" means the showing of the human male or female genitals, public area or buttocks with less than a full opaque covering, or the depiction of covered male genitals in a discernibly turgid state, and "sexual conduct" means acts of masturbation, homosexuality, sodomy, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, public area, buttocks or, if such person be female, breast.

(c) A person convicted of distributing material depicting nudity or sexual conduct shall be punished by imprisonment for not less than one nor more than three years, or by a fine not to exceed $10,000, or both. (1970 amendment).

"26-2103. The use of any premises in violation of any of the provisions of this Chapter shall constitute a public nuisance." (1971 amendment, § 26-2103 - § 26-2106).

"26-2104. Any materials declared to be obscene by the provisions of this Chapter and advertisements for such materials are hereby declared to be contraband."

"26-2105. (a) Every person who, during the course of a play, night club act, motion picture, television production or other exhibition, or mechanical reproduction of human conduct, engages in conduct which would be public indecency under Code section 26-2011 if performed in a public place, shall be guilty of participation in indecent exposure and upon conviction shall be punished as for a misdemeanor.

(b) Every person who procures, counsels or assists any person to engage in such conduct or who knowingly exhibits or procures, counsels or assists in the exhibition of a motion picture, television producton or other mechanical reproduction containing such conduct shall be guilty of a misdemeanor."

"26-2106. If any provision of this Chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are declared to be severable."

APPENDIX B

Georgia Criminal "Code" Section 26-2011, Public Indecency (Ga. Laws 1968, p. 1249).

26-2011. PUBLIC INDECENCY.—A person commits public indecency when he performs any of the following acts in a public place and upon conviction shall be punished as for a misdemeanor:

(a) An act of sexual intercourse;

(b) A lewd exposure of the sexual organs;

(c) A lewd appearance in a state of partial or complete nudity;

(d) A lewd caress or indecent fondling of the body of another person.

APPENDIX C

Ga. Appellate Procedure Act, Section 1(a)(3) (Ga. Laws 1965, p. 18, as amended, particularly by Ga. Laws 1968, p. 1072).

"Section 1. (a) Appeals may be taken to the Supreme Court and Court of Appeals from judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which writs of error are authorized by the Constitution and laws, in the following instances:

* * *

(3) From all judgments involving applications for discharge in bail trover and contempt cases; from all judgments or orders directing that an accounting be had; from all judgments or orders granting or refusing application for receivers, or for interlocutory or final injunction; from all judgments or orders rendered after hearing, continuing in effect, modifying, vacating, or refusing to continue, modify or vacate a temporary restraining order; from all judgments or orders granting or refusing applications for attachment against fraudulent debtors; from all judgments or orders granting or refusing to grant applications for alimony, either temporary or permanent, mandamus or other extraordinary remedy; from all judgments or orders refusing applications for dissolution of corporations created by the superior courts; and from all judgments or orders sustaining a motion to dismiss a caveat to the probate of a will.

APPENDIX D

Georgia Civil Practice Act, Section 81A-152(a) (Ga. Laws 1966, p. 609, as amended, particularly by Ga. Laws 1970, p. 170).

"Section 81A-152. (a) Effect. In all actions in Superior Court tried upon the facts without a jury, except actions involving only uncontested divorce, alimony and custody of minors, the court shall find the facts specially and state separately its conclusions of law thereon and judgment shall be entered pursuant to section 81A-158; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Request for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact and conclusions of law appear therein. Findings of fact and conclusions of law are unnecessary on decisions of motions under Section 81A-112 or 81A-156 or any other motion except as provided in Section 81A-141(b). The requirements of this subsection may be waived in writing by the parties. Provided, all verdicts and judgments heretofore rendered in any uncontested divorce, alimony or custody case without findings of fact and conclusions of law are hereby declared to be legal and binding and of the same effect as if such cases had been rendered with findings of fact and conclusions of law."